

DATE: October 9, 1990

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: Supplemental Petition - Recall

By memorandum of October 5, 1990, you asked whether San Diego Municipal Code section 27.2719 (permitting a supplemental petition after notice of insufficiency of a recall petition) was valid in light of your "intention ... to an 'across the board' elimination of 'supplemental petitions'. . . ."

It is axiomatic that Section 27.2719 is an existing statute, is clear on its face and permits supplemental petitions. Hence we construe your question to be whether your "intention" to eliminate all supplemental petitions affects its validity. It does not. The intent or view of a draftsman does not affect the plain language of a statute. *C-Y Development Co. v. City of Redlands*, 137 Cal. App. 3d 926, 932 (1982). This cardinal rule was eloquently stated by the Earl of Halsburg as follows:

My Lords, I have more than once had occasion to say that in construing a statute I believe the worst person to construe it is the person who is responsible for its drafting. He is very much disposed to confuse what he intended to do with the effect of the language which in fact has been employed. At the time he drafted the statute, at all events, he may have been under the impression that he had given full effect to what was intended, but he may be mistaken in construing it afterwards just because what was in his mind was what was intended, though, perhaps it was not done.

2A Sutherland, Statutory Construction (4th ed. 1984)

Section 48.12.

In the instant case, we need not even reach your intent in drafting or "undrafting" the section since it is the City Council who legislates (San Diego City Charter section 11) and although they repealed supplemental petition provisions in other areas (e.g., former Section 27.2115 in 1981 and former Section 27.2517 in 1980) the Council has left Section 27.2719 intact while making

subsequent changes to recall provisions (e.g., Sections 27.2701, 27.2703, 27.2710, 27.2711, 27.2713, 27.2714, 27.2723 and 27.2729).

In short, Section 27.2719 remains a viable section permitting supplemental petitions for recall petitions unaffected by your personal intention(s).

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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